

LAWRENCE A. ORGAN (SBN 175503)

larry@civilrightsca.com

NAVRUZ AVLONI (SBN 279556)

navruz@civilrightsca.com

CIMONE A. NUNLEY (SBN 326915)

cimone@civilrightsca.com

CALIFORNIA CIVIL RIGHTS LAW GROUP

332 San Anselmo Avenue

San Anselmo, California 94960

Telephone: (415)-453-7352

Facsimile: (415)-785-7352

J. BERNARD ALEXANDER (SBN 128307)

ALEXANDER KRAKOW + GLICK LLP

1900 Avenue of the Stars, Suite 900

Los Angeles, California 90067

Telephone: (310) 394-0888

Facsimile: (310) 394-0811

Attorneys for Plaintiff,

OWEN DIAZ

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**PLAINTIFF'S OBJECTIONS TO
TESLA'S COUNTER-DESIGNATIONS
OF DEPOSITION TESTIMONY OF ERIN
MARCONI**

Trial Date: September 24, 2021

Complaint filed: October 16, 2017

Plaintiff Owen Diaz hereby submits the following objections to Tesla's proposed
deposition transcript excerpts for Erin Marconi, Tesla Human Resources Business Partner:

Marconi, Erin 10/21/19, Volume 1

#	Lines	Deposition Excerpt	Objection/Counter-Designation	Objection to Counter-Designation
1	13:17-13:24	17 What did you do after you left Volt as a 18 program manager? 19 A I went to Tesla as an HR business partner. 20 Q So that would be approximately 2013? 21 A Correct. 22 Q How long were you an HR business partner at 23 Tesla? 24 A Until January 2017.	Counter-designation. Rule of completeness. FRE 106. 13:25-14:5 25 Q And what was your job title after you – after 1 January 2017? 2 A I took a time off work. I had been a 3 caregiver for my mother. 4 Q And have you worked at Tesla since that time? 5 A No.	Relevance, FRE 401-2. Ms. Marconi's post-Tesla work, over two years after Plaintiff worked at Tesla, is not relevant to any issue in this action.
7	36:05-13	5 Q Okay. And if you had known about someone 6 using the n-word at the Tesla factory, that would 7 certainly be something that you would investigate; 8 correct? 9 A Absolutely. 10 Q And the reason that you would investigate that 11 is use of the n-word at the Tesla factory could create a 12 hostile work environment for other workers; right? 13 A Correct.	Testimony presents deponent with a hypothetical and asks for improper lay opinion, hypothetical offered is not "rationally based on the perception of the witness" as required by FRE 701. Deponent was not designated by Plaintiff as an expert witness; this is impermissible expert opinion. FRE 702. If testimony allowed, counter-designation under the rule of completeness. FRE 106. 37:4-6 4 Do you recall ever investigating a claim where 5 it was alleged that the n-word was used? 6 A Not specifically.	Deponent was Tesla HR staff and was asked to testify about matters within her personal knowledge and experience, i.e. the requirements of Tesla's anti-discrimination and -harassment policies. Objection to Defendant's counter-designation: Relevance, FRE 401-3. Whether deponent recalled conducting particular investigations into the use of racial slurs not relevant. Testimony likely

#	Lines	Deposition Excerpt	Objection/Counter-Designation	Objection to Counter-Designation
				to confuse or mislead the jury, since deponent merely states she does not “recall” conducting such investigations.
14	56:22-57:04	<p>22 Q A temporary worker would be doing a task that</p> <p>23 a Tesla employee might also do; is that true?</p> <p>24 A Yes.</p> <p>25 Q And a temporary worker could also -- would at</p> <p>56</p> <p>1 least have some -- there would be at least some</p> <p>2 reporting structure to a Tesla employee, is that right,</p> <p>3 for a temporary worker?</p> <p>4 A Correct.</p>	<p>Improper lay opinion, hypothetical offered is not “rationally based on the perception of the witness” as required by FRE 701. Deponent was not designated by Plaintiff as an expert witness; this is impermissible expert opinion. FRE 702.</p> <p>Deposition does not establish that deponent has personal knowledge of the alleged fact to which she testified. FRE 602. Not relevant to Plaintiff’s specific allegations of alleged harassment in his work area and during his time frame and is more prejudicial than probative and would confuse the jury. FRE 401-403.</p> <p>If testimony is permitted, Tesla requests the following counter-designation under the rule of completeness. FRE 106.</p> <p>57:5-7 5 Q And so even if they're -- 6 A And then a dotted line to their actual 7 employer.</p>	<p>Improper lay opinion, FRE 701; undue confusion, FRE 403. Ms. Marconi was not a contract employee and does not have knowledge of all contract employees’ reporting structures. Her testimony about contract workers’ “actual employers” is speculative, unhelpful to the trier of fact, and unduly confusing and misleading to the jury.</p>
15	58:10-15	<p>10 Q Okay. And if someone does complain about what</p> <p>11 they consider to be inappropriate conduct, and they feel</p> <p>12 threatened, you would agree that as a</p>	<p>Improper lay opinion, hypothetical offered is not “rationally based on the perception of the witness” as required by FRE 701. Deponent was not designated by Plaintiff as an expert witness; this is impermissible expert opinion.</p>	<p>Relevance, FRE 401-403. Testimony about staffing agency procedures and practices not relevant to what Tesla employees</p>

#	Lines	Deposition Excerpt	Objection/Counter-Designation	Objection to Counter-Designation
		<p>Tesla HR person, 13 you would still have a responsibility to make sure that 14 nothing happened to them further; right? 15 A Oh, absolutely.</p>	<p>FRE 702. Not relevant to Plaintiff's specific allegations of alleged harassment in his work area and during his time frame and is more prejudicial than probative and would confuse the jury. FRE 401-403.</p> <p>If testimony is permitted, Tesla requests the following counter- designations under the rule of completeness. FRE 106.</p> <p>57:21-58:9 21 but as far as -- like I wouldn't want to investigate for 22 West Valley for their employee. I would be happy to 23 facilitate. 24 Does that make sense? 25 Q So Tesla's HR role for a complaint by a Page 58</p>	<p>would do; discussion of other employers' business practices likely to confuse the jury as to Tesla's obligations to remediate or address harassment.</p>

#	Lines	Deposition Excerpt	Objection/Counter-Designation	Objection to Counter-Designation
1			1 temporary worker would	
2			be to facilitate the	
3			2 investigation. Is that true	
4			typically?	
5			3 A Primary first thing would	
6			be obviously,	
7			4 depending on what that is,	
8			are they comfortable or do	
9			5 they feel threatened. Those	
10			kind of things you want to	
11			6 take care of in the	
12			immediate.	
13			7 The next thing I would do is	
14			get them	
15			8 connected with the person	
16			that would have been my role	
17			9 for their employer.	
18			58:16-59:5, 59:8-21	
19			16 Q And as a Tesla HR	
20			person, if someone had	
21			17 complained about like	
22			threatening conduct or	
23			feeling	
24			18 that they were	
25			threatened, you would at	
26			least have to	
27			19 make that workplace safe	
28			for them from that point	
			that	
			20 you find out about it on;	
			right?	
			21 A In the immediate,	
			absolutely. If then it	
			22 was -- the investigation was	
			conducted and it, say, only	
			23 involved temporary people	
			that were all under West	
			24 Valley --	
			25 Q Yeah.	
			1 A -- if West Valley	
			investigated it and came	
			2 back and said there wasn't	
			actually an issue, I'm going	
			3 to believe that West Valley	
			did their investigation	

#	Lines	Deposition Excerpt	Objection/Counter-Designation	Objection to Counter-Designation
			<p>4 thoroughly and if there was something to address,</p> <p>5 addressed it.</p> <p>8 You -- you typically rely on the contract --</p> <p>9 contracting agency to do an investigation into</p> <p>10 complaints by their employees; is that right?</p> <p>11 A If it is involving other of their employees.</p> <p>12 If it is involving Tesla employees, then I</p> <p>13 would talk to probably Tesla employees, they would talk</p> <p>14 to their employees.</p> <p>15 If the stars align and everyone was in the</p> <p>16 building or in the same side of the country and we would</p> <p>17 help -- sometimes I had been there when they were</p> <p>18 interviewing their employee and vice versa. But I</p> <p>19 wouldn't -- my preference would not be to interview</p> <p>20 someone else's employee, and especially not without them</p> <p>21 present .</p>	
35	108:4-109:12	<p>4 Exhibit 35 for the record is a three-page</p> <p>5 document Bates-stamped Tesla 140 to</p> <p>6 142. And it appears</p> <p>7 that at least in this situation with respect to Ramon</p> <p>8 Martinez and Owen Diaz, that eventually at least it got</p> <p>9 forwarded to you.</p> <p>10 Do you see that?</p> <p>11 A Yes.</p>	<p>Counter-designation. Rule of completeness. FRE 106.</p> <p>109:13-19</p> <p>13 Q Okay. And it looks like maybe Ed was talking</p> <p>14 about getting involved here, and Terri Garrett was</p> <p>15 asking for your help as to whether or not Mr. Romero</p> <p>16 should be involved in the investigation; right?</p> <p>17 A It looks like she wants him not to be</p> <p>18 involved.</p> <p>19 Q Right.</p>	<p>Relevance, FRE 401-403;</p> <p>Improper opinion, FRE 701;</p> <p>Hearsay, FRE 802.</p> <p>Witness did not recall receiving this e-mail or interacting with other employees regarding it.</p> <p>Tesla's proposed counter-</p>

#	Lines	Deposition Excerpt	Objection/Counter-Designation	Objection to Counter-Designation
11		Q And so at least at some point you did get		designation asks witness to speculate about others' actions. The proffered portions are also hearsay that do not fall within any recognized exception.
12		Mr. Diaz's statement about his -- the threat that he		
13		perceived from Ramon Martinez; correct?		
14		A Owen's statement?		
15		Q Yeah.		
16		A Assuming this whole thread was actually		
17		forwarded at the time?		
18		Q Yeah.		
19		A Yes. If it was, I can't say for sure.		
20		Q Okay. But based on the email chain, I mean,		
21		it looks like it was forwarded to you. Do you see that?		
22		A Correct.		
23		Q Okay.		
24		A Several days later; right? Yeah.		
25		Q Yeah.		
108				
1		The complaint was made on the 17th, and then		
2		forwarded again on the 20th to Wayne Jackson, and then		
3		it looks like Wayne Jackson forwarded it to you on that		
4		same day, on the		

#	Lines	Deposition Excerpt	Objection/Counter-Designation	Objection to Counter-Designation
		<p>20th.</p> <p>5 A Terri.</p> <p>6 Q I'm sorry.</p> <p>Terri.</p> <p>7 A Yeah.</p> <p>8 Q Terri</p> <p>forwarded it to you that</p> <p>same day,</p> <p>9 October 20th of</p> <p>2015; right?</p> <p>10 A Yes. And</p> <p>based on that, it would</p> <p>appear that</p> <p>11 it was all nextSource</p> <p>employees involved,</p> <p>other than</p> <p>12 Victor and Ed.</p>		

1

CALIFORNIA CIVIL RIGHTS LAW GROUP
ALEXANDER KRAKOW + GLICK LLP

DATED: September 28, 2021

By: /s/ Cimone A. Nunley
Lawrence A. Organ, Esq.
Navruz Avloni, Esq.
Cimone A. Nunley, Esq.
J. Bernard Alexander, Esq.

Attorneys for Plaintiff OWEN DIAZ